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The Gareth Morgan KiwiSaver Scheme Trust Deed

Gareth Morgan KiwiSaver Limited
Public Trust

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in Adelaide Auckland Brisbane
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Parties

Gareth Morgan KiwiSaver Limited at Wellington (**Sponsor**)

Public Trust (**Trustee**)

Background

- A By trust deed dated 2 April 2007 (**Original Trust Deed**) the Sponsor and Perpetual Trust Limited established a KiwiSaver Scheme called the Gareth Morgan KiwiSaver Scheme (**Scheme**) for the purpose of providing retirement and other benefits for natural persons and employees of employers participating in the Scheme. The Original Trust Deed was amended and consolidated into a new trust deed dated 7 September 2007 (**Amended Trust Deed**).
- B The Scheme is registered under the KiwiSaver Act 2006.
- C Perpetual Trust Limited was the original trustee of the Scheme.
- D In accordance with clause 4 of the Amended Trust Deed, by deed dated 18 February 2010, the Sponsor removed Perpetual Trust Limited as trustee of the Scheme and appointed Public Trust as the new trustee of the Scheme. Clause 25 of the Amended Trust Deed provides that the Trustee may by deed at any time, with the consent of the Sponsor, vary any part of the Trust Deed subject to the requirements of and to the extent permitted under the KiwiSaver Act 2006.
- E The Trustee has determined to amend and consolidate the provisions of the Amended Trust Deed for ease of reference, to confirm the change of Trustee, to remove participation of employers in the Scheme and to make certain other minor amendments.
- F The execution of this Deed by the Sponsor is evidence that the Sponsor has consented to the proposed amendments and to the consolidation of this Deed.
- G The Trustee considers that the amendments comply with the terms of clause 25 of the Amended Trust Deed.
- H Prior to executing this amending and consolidating deed, the Trustee has obtained a certificate from a solicitor as required by section 129(2) of the KiwiSaver Act.

Operative provisions

1 This Deed witnesses

- 1.1 The Amended Trust Deed is hereby rescinded with each and every one of the existing clauses and Rules substituted by the clauses and Rules set out in this Deed.
- 1.2 The Scheme is constituted upon the terms set out in this Deed which shall be binding on the Trustee, the Sponsor and Members.

Preliminary

2 Interpretation

- 2.1 Most words and phrases that begin with capital letters have special meanings and are defined in clause 56.

3 Establishing the Scheme

- 3.1 The Scheme began on the Commencement Date.
- 3.2 The Trustee agrees to act in accordance with the provisions of this Deed.
- 3.3 The name of the Scheme is the Gareth Morgan KiwiSaver Scheme.
- 3.4 The Scheme will be governed and administered in accordance with the K. Act and all other applicable laws and the provisions of this Deed.
- 3.5 The Scheme will be administered in accordance with this Deed and the Trustee, the Sponsor and all Beneficiaries shall be bound by the provisions of this Deed.
- 3.6 The Scheme's Fund consists of;
 - 3.6.1 the Assets held by the Trustee for the Scheme;
 - 3.6.2 contributions paid to the Scheme;
 - 3.6.3 any money or Assets transferred to the Scheme from another superannuation scheme or KiwiSaver Scheme; and
 - 3.6.4 all other Assets obtained by the Trustee for the purposes of the Scheme.
- 3.7 The Fund is held by the Trustee on trust on the terms of this Deed.

- 3.8 The provisions of this Deed that apply to the Scheme are deemed to include the implied provisions of the K. Act for so long as those provisions are in force and any provision of this Deed that is contrary to the implied provisions is void to the extent it is contrary.

Concerning the Trustee

4 Appointment and removal of Trustee

- 4.1 The Sponsor may by deed at any time remove the Trustee for the time being of the Scheme without being required to give any reason for that removal. The Sponsor must give the Trustee at least 90 days' notice in writing (or such lesser period of notice as the Trustee may agree) before removal. No consent will be required for such a removal. Such removal shall be conditional upon and not be effective until the appointment of a new trustee.

- 4.2 The office of a trustee shall become vacant if:

4.2.1 an order is made or an effective resolution is passed for the winding up of the Trustee or it is placed in liquidation, receivership or statutory management; or

4.2.2 the Trustee resigns from office by giving 90 days' notice (or such lesser period of notice as the Sponsor may agree) in writing to the Sponsor.

Such removal shall be conditional upon and not be effective until the appointment of a new trustee.

- 4.3 If the Sponsor removes the Trustee or the office of Trustee of the Scheme becomes vacant the Sponsor shall by deed appoint a new trustee as soon as reasonably practical.
- 4.4 No person shall be appointed as a new Trustee unless qualified to act as such under the K. Act.

5 Powers and duties of Trustee

- 5.1 The Trustee shall have all the powers in respect of the Scheme and over the Fund which the Trustee could exercise if the Trustee was the absolute owner of the Fund.

6 Investment

- 6.1 All money belonging to the Scheme and available for investment shall be invested in accordance with the provisions of the Trustee Act 1956 as to the investment of trust funds.

- 6.2 The Trustee may with the approval of the Sponsor operate separate Investment Portfolios on terms and conditions the Trustee prescribes from time to time.
- 6.3 Each Investment Portfolio will consist of such asset classes as agreed between the Trustee and the Manager from time to time.
- 6.4 All profits and losses of an Investment Portfolio will belong to the Members who invested in that Investment Portfolio.
- 6.5 The Trustee will maintain a record in respect of each Investment Portfolio that enables the interests of each Member who invests in that Investment Portfolio to be identified.
- 6.6 The Trustee and any investment manager of the Scheme shall, in exercising their power of investment, exercise the care diligence and skill required by section 13B or section 13C of the Trustee Act 1956 notwithstanding anything to the contrary in section 13D(1) of that Act.
- 6.7 Each Member shall provide the Trustee with an Investment Direction, indicating the proportion of their Member Account that will be invested in each Investment Portfolio, subject to terms and conditions the Manager prescribes from time to time. Where a Member does not provide an Investment Direction the Member will be deemed to have provided an Investment Direction selecting the default Investment Portfolio, as indicated on the application form that the Member submitted.
- 6.8 A Member may once during each Scheme Year, free of charge, amend that Member's Investment Direction for the investment of the Member's Account. Such amendment shall be in writing and in a form prescribed by the Trustee.
- 6.9 If a Member wishes to amend their Investment Direction more than once during a Scheme Year, the Trustee may charge a fee for each amendment to the Investment Direction after the first amendment. The fee will be deducted from the relevant Member's Account in a manner determined by the Trustee. A Member may only change their Investment Direction a maximum of three times each year.
- 6.10 The requirement to comply with each Member's Investment Direction shall constitute a contrary intention for the purposes of sections 2(5) and 2(5A)(d) of the Trustee Act 1956 as amended from time to time and the wide power of investment contained in this clause 6 shall only apply to the extent that such contrary intention permits.
- 6.11 Nothing in this clause 6 shall purport to constitute a contrary intention for the purposes of section 13D(1) of the Trustee Act 1956 as amended from time to time and sections 13B and 13C of that act shall apply in all respects to this Deed.

7 Power to employ and appoint

- 7.1 The Trustee may employ or contract with, any investment manager, administration manager, custodian, manager or agent. Such Persons may be engaged on those terms and conditions as the Trustee considers expedient.

- 7.2 Subject to clause 18, the Trustee may agree to the terms of payment of any Persons employed as the Trustee considers appropriate.

8 Gareth Morgan KiwiSaver Limited appointed Manager

- 8.1 The Trustee agrees with the Sponsor that the Trustee will appoint Gareth Morgan KiwiSaver Limited, Gareth Morgan Investments Limited Partnership or another Group Company nominated by the Sponsor to act as Manager of the Scheme for a term commencing on the date of this Deed and terminating:

- 8.1.1 upon the winding up of the Scheme in accordance with this Deed; or
- 8.1.2 upon that company's appointment being lawfully terminated in accordance with the terms of this Deed.

- 8.2 The Manager shall be automatically removed if an order is made or an effective resolution is passed for the winding up of the Manager or it is placed in liquidation, receivership or statutory management.

- 8.3 The Trustee may remove the Manager of the Scheme where the Trustee has given written notice to the Manager of a material or persistent breach of the Manager's obligations under this Deed or the terms of any agreement from time to time in force between the Manager and the Trustee, and the Manager has not rectified that breach within 30 days of receipt of such notice.

- 8.4 The Trustee may, in relation to the Scheme, enter into such agreements with the Manager as the Trustee considers necessary or desirable and without derogating from the generality of the foregoing or any other power in this Deed, subject to clause 18, the Trustee may:

- 8.4.1 agree to pay from the Fund, management fees and other amounts to the Manager on the terms contained in this Deed or on such other terms as to payment of fees and charges as agreed between the Trustee and the Manager;
- 8.4.2 provide for the Trustee to pay or refund from the Fund to the Manager or any other Person any costs, expenses, commissions or other amounts expended by the Manager or any other Person that the Trustee considers should properly be paid by the Scheme.

9 Assignment of rights and a discharge of obligations

- 9.1 The Manager may assign its rights and be discharged from its obligations and duties under this Deed, on at least ninety (90) days prior written notice to, and with the consent of the Trustee, to a person of creditworthiness and competence at least similar to that of the Manager. If:

- 9.1.1 any such discharge of obligations and duties relates only to obligations and duties incurred after the effective date of the discharge; and

9.1.2 the Manager will provide evidence to the reasonable satisfaction of the Trustee of the proposed assignee's suitability, competency and creditworthiness,

such consent shall not be unreasonably withheld.

10 Power to delegate

- 10.1 The Trustee may delegate any of its duties or powers or discretions under this Deed to any Person the Trustee appoints to manage the Scheme or any Assets of the Fund.
- 10.2 The Trustee may appoint any Person to be attorney or agent for the Trustee. The Trustee may specify the purposes of any appointment and the authority that any attorney or agent is to have.
- 10.3 The Trustee shall remain responsible and will be liable for the acts or omissions of any Person appointed under clauses 10.1 or 10.2.

11 Absolute and uncontrolled discretion

- 11.1 The Trustee in the exercise of the trusts, authorities, powers and discretions conferred on it by this Deed shall have total discretion, subject to clause 6 and the K. Act. It may at any time exercise or enforce any of the trusts, authorities, powers and discretions or may refrain from exercising all or any of them.
- 11.2 Subject to the rights of Members created by this Deed and any order of a court, no Member shall be entitled to interfere with or question the exercise or non-exercise by the Trustee or the Sponsor of any rights, powers, authorities or discretions conferred upon them or either of them by this Deed or in respect of the Fund or any parts thereof.

12 Advice of experts

- 12.1 The Trustee may, after consultation with the Manager, act on the advice or opinion of any accountant, actuary, barrister, solicitor, stock broker, consultant, medical practitioner, investment advisor, auditor or other professional person or expert and shall not be responsible for any loss occasioned by so acting. The reasonable cost of obtaining such advice shall form part of the expenses incurred by the Trustee in connection with the Scheme, in accordance with clause 18.10.

13 Register of Members and Employers

- 13.1 The Trustee shall maintain a register of Members for the Scheme. It should be entered in each register:

- 13.1.1 the name of each Member;
- 13.1.2 the name of the Contributing Employer of each Member;
- 13.1.3 a record of the Member Account for each Member;
- 13.1.4 the date on which the name of every Person was entered into the register as a Member and the date on which any Person ceased to be entered on the register.

14 The Trustee and every agent

- 14.1 The Trustee shall be entitled to rely absolutely upon entries in the register being correct and neither the Trustee nor any of the Trustee's agents, except the Manager, shall incur any liability or responsibility on account of any mistake in respect of the register.

15 Commitment by Trustee

- 15.1 The Trustee shall use due care and skill in carrying out its duties and obligations and shall at all times act in the interests of the Members.

16 Liability of Trustee

- 16.1 The Trustee shall not be liable for:
 - 16.1.1 any losses or liability except those arising from its own wilful or negligent act or default, breach of trust or the dishonesty of its directors or officers;
 - 16.1.2 the neglect or default of any professional advisor or any other agent engaged in good faith by the Trustee under clause 12.

17 Indemnity of Trustee

- 17.1 The Trustee shall be indemnified and reimbursed out of the Fund for any claims, costs, damages, liabilities and expenses which the Trustee may reasonably pay or incur in the administration of the trusts, powers and discretions vested in it under this Deed. The Trustee shall have a first claim on the Fund for this indemnity.
- 17.2 This indemnity shall extend to any payments made to any Person whom the Trustee in good faith believes to be entitled to receive the payment although it may be subsequently found the Person was not so entitled.
- 17.3 The Trustee shall have lien or charge over all Assets in the Fund for the indemnity and may retain and pay out of the Assets in the Fund all sums and amounts necessary to give effect to the indemnity.

- 17.4 Except as expressly provided in this Deed, any agent of the Trustee, including the Manager, acting for or on behalf of the Trustee shall have the benefit of any exclusions or indemnities given to the Trustee in this Deed.
- 17.5 Except to the extent to which the Trustee is liable pursuant to clause 16.1, the liability of the Trustee under this Deed, the K. Act or at law, shall at all times be limited to the Assets of the Fund.

18 Fees, costs and expenses

- 18.1 The Trustee shall be entitled to be paid a reasonable annual fee in respect of each Member for the routine duties and responsibilities that it performs in respect of the Scheme as agreed between the Trustee and Sponsor from time to time. Subject to clause 18.3:
- 18.1.1 the Trustee's fee described in clause 18.1 shall be in an amount agreed between the Sponsor and the Trustee.
- 18.1.2 the Trustee shall be entitled to pay or reimburse itself for any amount payable to the Manager as provided for in clause 8.4.1.
- 18.2 Any fees, costs, charges and expenses payable to the Trustee must be disclosed in writing to all Members before they join the Scheme provided that such disclosure may take the form of a general description of the ability of the Trustee to charge or incur fees, costs, charges and expenses.
- 18.3 The amount that the Trustee shall be paid in respect of a Member for the fees described in clause 18.1 shall be 1% per annum of the value of the Member's Account, to be calculated monthly during each Scheme Year on a day agreed between the Trustee and the Manager (plus GST, if any). This clause is subject to clause 18.4.
- 18.4 The minimum amount that the Trustee shall be paid in respect of a Member for the fees described in clause 18.1 is \$50 per annum.
- 18.5 Notwithstanding clauses 18.3 and 18.4, the minimum fee described in clause 18.4 will not apply to a Member who paid or elected to pay the \$500 fee described in clause 17.3.2 of the Original Trust Deed prior to the date of this Deed.
- 18.6 The Trustee may deduct the fees described in clause 18.1 from a Member's Account in a manner determined by the Trustee.
- 18.7 The fee of 1% of the value of a Member's Account expressed in clause 18.3 may be increased to a rate no greater than 2% of the value of a Member's Account, where the Manager and Trustee agree that such fee be increased to cover additional costs that will be or are incurred by either or both of them.

- 18.8 The Trustee may also charge, in addition to the fees referred to above in clause 18.1, a fee of \$50 (plus GST, if any) for performing the following duties:
- 18.8.1 A Member entering the Scheme;
 - 18.8.2 A Member withdrawing from the Scheme;
 - 18.8.3 A Member transferring to or from the Scheme;
 - 18.8.4 A Member amending their Investment Direction more than once in a Scheme Year in accordance with clause 6.9; and
 - 18.8.5 In respect of a Member who joined the Scheme after 18 February 2010, a Member making a financial hardship, serious illness or first home withdrawal in accordance with the K. Act.

The Trustee may deduct such fee from the Member Account of the Member in respect of whom the duties were performed.

- 18.9 The fees expressed in dollar terms in clauses 18.4 and 18.8 may be indexed at the end of every third Scheme Year using Statistics New Zealand's Consumers' Price Index.
- 18.10 The Trustee shall be entitled to be reimbursed, for all other costs, charges and expenses properly incurred by the Trustee in connection with or in relation to Scheme and that are not covered by clause 18.1 following consultation with the Sponsor in the following circumstances:
- 18.10.1 The Trustee has consulted with the Manager prior to incurring such cost, charge or expense; and
 - 18.10.2 A prudent professional trustee would consider it reasonable to incur such cost, charge or expense in order to assist the Trustee or the Scheme to comply with its obligations and duties under this Deed and at law.

Such costs, charges and expenses may be deducted from the Member Account of the Member in respect of whom the costs were incurred or in accordance with clause 19.

- 18.11 Notwithstanding anything else in this Deed, the Trustee may, with the Sponsor's consent, charge any Member, or any group of Members, fees at a lower rate or amount than what is expressed anywhere in this Deed, or waive or rebate such fees to such Members.

19 Power of apportionment

- 19.1 The Trustee shall determine whether any costs, expenses or charges incurred by the Scheme shall be apportioned between any two or more Member Accounts. The Trustee shall in its discretion equitably apportion such costs, expenses or charges and every determination or apportionment shall be final and binding on all Members.

20 Accounts

20.1 The Trustee shall make sure:

20.1.1 proper accounts and records are kept in respect of the Scheme; and

20.1.2 annual accounts are prepared in respect of the Scheme; and

20.1.3 those annual accounts are audited by an auditor.

21 Annual report and Return

21.1 The Trustee shall prepare an annual report and return on the Scheme.

21.2 The report and return shall include such matters and be provided to such persons and within such timeframes as may be required by the K. Act and/or any other relevant legislation.

22 Related transactions

22.1 The Trustee or its agent shall not:

22.1.1 Purchase, invest in or otherwise acquire any Asset on account of the Scheme that comprises any type of interest in the Sponsor, the Trustee, any Related Company or Related Person of the Sponsor or any Related Company or Related Person of the Trustee.

22.1.2 Cause any Assets of the Scheme that comprise cash to be invested or lodged with the Sponsor, the Trustee, any Related Company or Related Person of the Sponsor or any Related Company or Related Person of the Trustee.

22.2 The Manager shall be permitted to sub-delegate any of its duties and responsibilities to a Related Company or a Related Person at its own expense.

22.3 The Manager, the Trustee or any Related Company or Related Person of the Manager as the case may be shall not be liable to account to the Scheme or any Member for any profit or loss arising from any transaction entered into in accordance with clause 8.4 or clause 22.2.

23 Change of Scheme name

23.1 The Sponsor shall be entitled, with the consent of the Trustee, (which shall not be unreasonably withheld) to change the name of the Scheme by way of a deed amendment to the Trust Deed. Where the Scheme's name is changed pursuant to this clause, the Trustee must give notice to the Government Actuary in accordance with section 164 of the K. Act. The Trustee must also notify all Members of the change of name.

24 Sponsor

- 24.1 The Sponsor acknowledges that it is a fiduciary for the Scheme's Members and in carrying out its obligations under this Deed will be subject to fiduciary duties.
- 24.2 The Sponsor may delegate or assign any of its powers and functions under this Deed to any other Person on terms and conditions agreed by the Sponsor and the other Person from time to time.

Alteration of Trust Deed**25 Power to alter Trust Deed**

- 25.1 The Trustee may by deed at any time, with the consent of the Sponsor vary any part of this Deed subject to the requirements of and to the extent permitted under the K. Act.

26 Certificate of compliance

- 26.1 Before any variation is made to this Deed the Trustee shall give a certificate or obtain a certificate from the administration manager or a solicitor as required by the K. Act and/or any other relevant legislation.

27 Copies to Government Actuary

- 27.1 The Trustee shall give a copy of the certificate under clause 26.1 and a copy of any variation to the Government Actuary as required by the K. Act and/or any other relevant legislation.

Winding up of the Scheme**28 Winding up of the Scheme**

- 28.1 The Scheme shall be wound up if:
- 28.1.1 the Sponsor notifies the Trustee in writing that the Scheme is to be wound up; or
 - 28.1.2 the Trustee is of the opinion that the Scheme is or will be unable to fulfil its purpose and resolves that the Scheme should be wound up; or
 - 28.1.3 the Scheme ceases to have any Beneficiaries and the Trustee resolves that the Scheme should be wound up; or

28.1.4 the Government Actuary orders that the Scheme be wound up in any of the circumstances specified under the K. Act; or

28.1.5 the winding-up of the Scheme is otherwise required by any law and the Trustee accordingly resolves that the Scheme should be wound-up.

28.2 Immediately after the Winding Up Date:

28.2.1 no further Persons shall be admitted as Members to the Scheme; and

28.2.2 no further contributions shall be paid by Members or any Contributing Employer to the Scheme, except contributions that accrued before the Winding Up Date; and

the Trustee shall realise the Assets of the Fund so far as they relate to the Scheme, as soon as practicable, applying reasonable commercial commonsense.

29 Advice to Government Actuary

29.1 The Trustee shall lodge a copy of the winding up resolution with the Government Actuary within the timeframes required by the K. Act and/or any other relevant legislation.

30 Application of Fund

30.1 When the proceeds obtained from realising the Assets of the Fund have been received the Trustee shall allocate the proceeds in the following order of priority:

30.1.1 first, in allowing for all reasonable costs, fees, liabilities and expenses that have or will accrue in accordance with clause 18 in the winding up of the Scheme and the administration of the Scheme up to the Winding Up Date and any tax of the Scheme or of the Members;

30.1.2 secondly, in providing for benefits payable under this Deed which had become payable prior to the Winding Up Date and then remain unpaid;

30.1.3 thirdly, in respect of each Member who at the Winding Up Date has any sum in their Member Account, the transfer of a benefit equal in value to this sum to another KiwiSaver Scheme in accordance with clause 30.4 below;

30.2 If in following the priorities of payment there is insufficient money to satisfy all the obligations above the amount of each benefit shall be reduced equitably and proportionately among all Members entitled to the benefits.

30.3 No Assets held in respect of the Member Account shall be used to pay any benefit or liability for any Member apart from the Member in respect of whom the Member Account is held.

30.4 All benefits payable to Members of the Scheme on a windup shall be paid subject to compliance with the K. Act, by way of transfer to another KiwiSaver Scheme and the provisions of clause 33 shall apply to all such payments.

30.5 The Trustee shall provide copies of final accounts and advice as to the manner in which the Assets of the Fund are to be distributed to such persons and within such timeframes as may be required by the K. Act and/or any other relevant legislation.

31 Completion of distribution

31.1 The Trustee shall, to the extent required by any relevant legislation, inform the Government Actuary of the date on which the distribution following a wind-up is completed.

32 Member Account

32.1 When a Member joins the Scheme, the Trustee will open a Member Account for the Member with respect to the Scheme.

32.2 A Contributing Employer may contribute to the Scheme on behalf of a Member.

32.3 The Trustee shall keep and update at such intervals as the Trustee may determine a record in respect of each Member of all contributions made by the Member and in respect of the Member and investments made from such contributions in the Member's Account in an Investment Portfolio. A Member's Account at any given date lists all money held with regard to the Member and all investments held in Investment Portfolios with regard to such Member at the relevant time.

32.4 Money comes to a Member's Account and it is increased by:

32.4.1 contributions paid by the Member or in respect of the Member by a Contributing Employer that have not been used by way of acquisition of investments in an Investment Portfolio; plus

32.4.2 amounts transferred into the Scheme from another superannuation scheme or into the Scheme from another KiwiSaver Scheme (as the case may be) in respect of the Member that have not been used in the acquisition of investments; plus

32.4.3 money received following the realisation of investments in an Investment Portfolio; plus

32.4.4 any amounts received from the Crown or other amounts received under the K. Act that have not been used by way of acquisition of investments in an Investment Portfolio; plus

32.4.5 income and cash returns from investments in an Investment Portfolio and on money in the Member Account, not yet invested.

- 32.5 Money leaves a Member Account and it is reduced by:
- 32.5.1 withdrawal or benefit payments made to a Beneficiary; plus
 - 32.5.2 benefits transferred from the Scheme to another KiwiSaver Scheme at the request of the Member; plus
 - 32.5.3 amounts paid in the acquisition of investments in an Investment Portfolio; plus
 - 32.5.4 fees charged by the Trustee that are to be paid by the Member and deducted from the Member Account; plus
 - 32.5.5 payment of the Member's share of any other fees, costs, expenses, liabilities or tax which are to be payable by the Member and deducted from the Member Account; plus
 - 32.5.6 the payment of any amount required by the K. Act; plus
 - 32.5.7 payment of any tax under clause 35.

Transfers

33 Transfers to another KiwiSaver Scheme

- 33.1 Subject to the K. Act, if a Member becomes a member of another KiwiSaver Scheme the Trustee shall, at the Member's request, or if the K. Act requires it, as provided under the K. Act transfer to the other scheme an amount equal in value to the Member's Account.
- 33.2 The Trustee must, subject to the K. Act receive written consent on acceptable terms from the Transferee Scheme trustees.
- 33.3 The receipt from an authorised person for the Transferee Scheme shall be a complete discharge to the Trustee.
- 33.4 The Trustee shall be under no obligation to see to the application of any amount transferred to a Transferee Scheme.

34 Transfers from another scheme

- 34.1 If any Member is entitled to a benefit from any other superannuation scheme or KiwiSaver Scheme the Trustee may, at its discretion, accept a transfer amount from that other scheme.
- 34.2 The transfer amount is the amount which the trustee of the transferor scheme transfers to the Scheme on behalf of the Member.

- 34.3 If any transfer amount is paid into the Scheme it shall be added to the relevant Member's Account.

General provisions affecting benefits

35 Payment of tax

- 35.1 The Trustee shall if obliged by law deduct from any Beneficiary's benefit or from the relevant Member Account the amount of any tax assessed against or payable by or in respect of the Beneficiary or the Beneficiary's interest in the Scheme.
- 35.2 The Trustee is authorised to realise investments to the extent necessary to make payment of any such tax.
- 35.3 The Trustee shall pay those deducted amounts to the relevant authority. A benefit payable to a Beneficiary shall be the net amount after any deductions have been made.
- 35.4 Each Beneficiary shall indemnify the Trustee in respect of any tax payable by the Trustee in respect of that Beneficiary or Beneficiary's interest in the Scheme.

36 Deduction of other charges

- 36.1 The Trustee may deduct any other fees, costs, expenses or other liabilities payable in respect of a Member under this Deed from the Member Account of that Member.

37 Proofs

- 37.1 Any Person claiming to be entitled to a benefit from the Scheme shall on request produce to the Trustee any evidence or information that may be reasonably required by the Trustee.
- 37.2 Until that evidence or information is produced the Trustee may withhold payment of any benefit.

38 Receipts

- 38.1 The payment by the Trustee of any benefit in respect of a Member to a Beneficiary shall completely discharge any liability the Trustee may have in respect of that benefit.
- 38.2 The Trustee shall be under no obligation to see how any benefit paid is used.
- 38.3 Any person to whom a benefit is payable shall, if requested, give to the Trustee at the time of payment a receipt and release in the form required by the Trustee.

38.4 In the event of any Member or any Person being paid any amount in error in excess of the Member's proper entitlement then that Person will immediately upon demand by the Trustee refund that amount as a debt due to the Scheme.

39 Unclaimed benefits

39.1 If the Trustee is unable to trace a Beneficiary section 195 of the K. Act shall apply.

40 Payment of benefits on death

40.1 If a Member dies the Trustee must pay that Member's benefits in accordance with the K. Act

40.2 The Trustee is entitled to insist on receiving death certificates, probate, letters of administration or any other information they may require before making payment of benefits on death.

41 Benefits not assignable

41.1 The benefits and rights under the Scheme belong only to the Member.

41.2 No Member or Beneficiary may assign, charge, pass to any other person or mortgage their benefits in any way.

41.3 Subject to clause 44, the Trustee may not recognise the interests of any other Person even if it has notice of that Person's interest.

42 Bankruptcy of Beneficiary

42.1 To the maximum extent permitted at law, where the Trustee has reason to believe a Member is likely to or has committed an act of bankruptcy the Member shall forfeit entitlement to all that Member's benefits under this Deed.

42.2 The Trustee shall hold and may apply the benefits which would otherwise have been payable to the Member for the benefit of the Member or any Dependents of the Member in such manner as it thinks fit.

43 Infancy or incapacity of Beneficiary

43.1 If any benefit is for a Beneficiary who is:

43.1.1 an infant; or

43.1.2 under a legal incapacity; or

43.1.3 in the opinion of the Trustee incapable of managing their own affairs,

the Trustee may pay the benefit to another person for the benefit of that Beneficiary on those terms the Trustee thinks appropriate.

44 Relationship property

- 44.1 The Trustee shall give effect to any court order or agreement entered into by a Member to make a relationship property settlement with his or her spouse, civil union partner or de facto partner (**Partner**).
- 44.2 A certified copy of the documentation between the Member and the Partner must be provided to the Trustee before the Trustee can give effect to any relationship property agreement or order of the Court. In the case of a relationship property agreement, the Trustee shall give effect to such an agreement only if the Trustee is satisfied that the agreement has been approved by the Court as meeting the requirements of the Property (Relationships) Act 1976.
- 44.3 The Trustee shall not pay an amount to the Member and/or Partner which would be greater in value than the benefits to which the Member would have been otherwise entitled to receive.

Miscellaneous

45 Notice to Beneficiary

- 45.1 Any notice given to any Beneficiary of the Scheme shall be considered served if:
- 45.1.1 it is delivered to that Beneficiary personally or to the Beneficiary's normal home address;
 - 45.1.2 it is sent by post to the address of the Beneficiary last known to the Trustee;
or
 - 45.1.3 it is sent by email to the address designated by that Beneficiary.
- 45.2 Any notice sent by post to a Beneficiary shall be considered served three days after the date it was posted.
- 45.3 Any notice sent by email to a Beneficiary shall be deemed to be served when received by the Beneficiary in accordance with the Electronic Transactions Act 2002.

46 Service of notice to parties to Deed

- 46.1 Any notice required to be given to the Trustee, the Sponsor or any Contributing Employer may be:

- 46.1.1 sent by registered mail to such address or Person as the Trustee, the Sponsor or the Contributing Employer (as the case may be) may specify in writing; or
 - 46.1.2 delivered personally; or
 - 46.1.3 made by facsimile; or
 - 46.1.4 made in any other manner as may be agreed between the Trustee and the Sponsor.
- 46.2 A notice given to the Trustee and, the Sponsor shall be considered to have been duly given or made:
- 46.2.1 three days after being deposited in the mail by the sender with mail postage pre-paid;
 - 46.2.2 on delivery when delivered by hand by the sender;
 - 46.2.3 if sent by facsimile when a completed transmission report is received by the sender unless a verifiable query as to material eligibility is properly raised;
 - 46.2.4 if made in any other manner then as agreed between the Trustee and the Sponsor.

47 Confidentiality

- 47.1 The Trustee must treat all information disclosed to it in connection with the Scheme in a confidential manner. It may however pass on information to those concerned with the Scheme's administration or as required by law. In these circumstances the Trustee shall obtain assurances from those Persons that all information will be treated by them in the same way.

48 New Zealand law

- 48.1 This Deed shall be construed according to the laws of New Zealand.

Part 2 - Rules applicable to Members of Scheme

49 Introduction

- 49.1 The KiwiSaver Rules contained in the K. Act shall apply to all Members.
- 49.2 If there is any inconsistency between the Rules contained in this Part 2 or any other provision of this Deed and the provisions of the K. Act, the provisions of the K. Act shall prevail.

50 Eligibility

- 50.1 In accordance with the K Act, any natural person may apply to join the Scheme as a Member by completing an application in such form as may be prescribed from time to time by the Trustee.
- 50.2 The Sponsor or the Trustee may refuse any application without giving reasons for any refusal.

Acceptance of application to join

- 50.3 An eligible person becomes a Member of the Scheme when the Trustee accepts the person's application.

Cessation of Membership

- 50.4 A Member stops being a Member of the Scheme when the Member receives all benefits the Member is entitled to receive under the Scheme, or when a Member transfers to another KiwiSaver Scheme pursuant to clause 33.

51 Members' contributions

- 51.1 Each Member will make contributions in the manner specified in the K. Act. Such contributions may consist fully or partially of Contributing Employer contributions, subject to the K. Act.
- 51.2 A Member may make additional contributions on the basis prescribed in the K. Act.
- 51.3 Subject to the K. Act, the Trustee may set Minimum Contribution Amounts.
- 51.4 For the avoidance of doubt, all Contributing Employer contributions to the Scheme on behalf of a Member, vest immediately in that Member.

52 Suspension of contributions

- 52.1 A Member may stop and recommence making contributions to the Scheme at any time and for any period provided that any requirements contained in the K. Act, which relate to contributions holidays, have been complied with.
- 52.2 A Member who stops or recommences making contributions under clause 52.1, must advise the Trustee, or the Trustee's agent, provided however that the Member shall not be required to advise the Trustee if the Member makes contributions to the Scheme via the Commissioner of Inland Revenue in accordance with the K. Act.

53 Termination of contributions

- 53.1 When a Member stops being a Member all contributions shall cease.

Member's benefits

54 Permitted withdrawals or benefits

- 54.1 Subject to any minimum withdrawal amounts agreed between the Trustee and Sponsor from time to time, a Member shall only be entitled to withdraw part or all of their Member Account where and to the extent that the K. Act allows.

55 Deferment of benefit

- 55.1 A Member is not required to withdraw that Member's interest in the Scheme on the end payment date, as that term is defined in the KiwiSaver Rules.
- 55.2 Where a Member has a right to elect to defer receipt of any benefit which they are entitled to receive, the Trustee shall inform the Member in writing of that right.

56 Definitions

- 56.1 In this Deed unless the context sensibly requires otherwise:

Assets means any money, property or other assets of any kind includes:

- (a) real and personal property;
- (b) any debt;
- (c) any right or interest or other benefit;

and any interest in any of the foregoing whether in possession or not.

Beneficiary means any Member or any other person entitled to any benefit from the Scheme.

Commencement Date means 1 October 2007.

Contributing Employer means an employer who makes contributions in respect of an employee who is a Member .

Dependant means any person whom the Trustee determines is or has been dependant on a Member.

Employment means continuous full-time or part-time permanent employment under a contract of employment with an employer and including any probationary period.

Fund means the Assets for the time being held by or on behalf of the Trustee for the purposes of the Scheme.

Government Actuary means the Person acting as Government Actuary and includes any Person lawfully delegated to exercise or perform any of the powers or functions of a Government Actuary.

Group Company means the Sponsor and any Related Company of the Sponsor.

Investment Direction means the direction by a Member, in such a form as the Trustee may prescribe, as to the investment of money held in a Member Account in an Investment Portfolio.

Investment Portfolio means an Investment Portfolio established under clause 6.2

K. Act means the KiwiSaver Act 2006.

KiwiSaver Scheme means a KiwiSaver Scheme registered under the K. Act.

KiwiSaver Rules means the provisions implied into this Deed under section 126 and Schedule 1 of the K. Act.

Leave of Absence in respect of a Member shall mean, provided that there is a reasonable expectation of that Member returning to Employment:

- (a) any period of absence from Employment due to 'parental leave' or a 'period of preference' (both of which expressions are contemplated by the Parental Leave and Employment Protection Act 1987) as determined by the Member's employer; or
- (b) any other period of absence from Employment, whether due to illness, for the purposes of education or training, or due to being overseas or otherwise, approved by the Member's employer; or
- (c) with the approval of the Member's employer any period of leave of absence from attendance at work during the usual hours of employment of that Member and during which period of absence the Member does not receive remuneration from the Member's employer.

Manager means any person to whom the Trustee has contracted some or all of the management of the Scheme.

Member means a natural person, who is a member of the Scheme.

Member Account or **Member's Account** means the member account in respect of a Member as described in clause 32.

Membership means in respect of a Member that Member's membership of the Scheme, including any period of Leave of Absence.

Minimum Contribution Amount means a minimum amount that may be contributed to the Scheme and includes regular and lump sum contributions and Member contributions.

Person includes any individual, company, corporation, firm, partnership, joint venture, association, organisation, society, trust, state or agency of state in each case whether or not having a separate legal personality.

Related Company means a company that is deemed to be related to another company as defined by sub-section 2(3) of the Companies Act 1993.

Related Person in respect of the Sponsor or the Trustee (as applicable), means any of the following:

- (a) a 'related body corporate' of the Sponsor or the Trustee as that term is defined in regulation 2(3) of the Securities Regulations 1983; or
- (b) any director or shareholder in the Sponsor or in the Trustee; or
- (c) a relative of any director or shareholder in the Sponsor or in the Trustee; or
- (d) any Person in which a director or shareholder in the Sponsor or in the Trustee or any relative of a director or shareholder in the Sponsor or in the Trustee has a material financial interest; or
- (e) any unit trust, Registered Superannuation Scheme, group investment fund or other entity or Person that is owned or managed or controlled by the Sponsor or the Trustee or a Related Person of the Sponsor or the Trustee including situations where the control is over the investment of funds or assets beneficially owned by others.

Rules means the rules set out in Part 2 of this Deed in accordance with the context of this Deed as amended from time to time.

Salary or **Wages** has the same meaning as that given to these terms in the K. Act.

Scheme means the Gareth Morgan KiwiSaver Scheme established under this Deed pursuant to the K. Act.

Scheme Year means a period commencing on 1 April of one year and ending on 31 March of the next year.

Trust Deed and **this Deed** mean this deed of trust as varied from time to time.

Trustee means the trustee or trustees for the time being of the Scheme.

Winding Up Date means immediately after the date of any of the events described in clause 28.1.

Interpretation

- 56.2 The headings and margin notes in this Deed are only for convenience of reference and shall not affect its interpretation.
- 56.3 In this Deed where the context permits words describing any gender include all genders.
- 56.4 This Deed is binding upon the parties and their respective successors, Personal Representatives and permitted assigns.
- 56.5 In this Deed where the context permits words describing the singular include the plural and vice versa.
- 56.6 Reference to any statute includes all amendments and re-enactments of that statute and all regulations and Orders in Council made under it.
- 56.7 This Deed includes the Rules.

Execution and date

Executed as a deed.

Date:

Signed by
Gareth Morgan KiwiSaver Limited
in the presence of:) _____
) Director
)_____
Director/Authorised signatory

Witness signature:

Witness name:

Occupation:

Address:

Signed on behalf of Public Trust by its
attorney) _____
) Attorney
)

in the presence of:

Witness signature:

Witness name:

Occupation:

Address: